

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ROBERT C. LESNER, Father of RANDY LEE  
LESNER, Deceased,

UNPUBLISHED  
December 28, 1999

Plaintiff-Appellant,

v

No. 211230  
WCAC  
LC No. 000213

LIQUID DISPOSAL, INC., and HARTFORD  
ACCIDENT & INDEMNITY FUND,

Defendants-Appellees.

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Before: Neff, P.J., and Murphy and J.B. Sullivan\*, JJ.

PER CURIAM.

This case has been remanded by our Supreme Court for consideration as on leave granted. Plaintiff Robert C. Lesner appeals a decision by the Worker's Compensation Appellate Commission (WCAC) granting him survivor's benefits. We vacate the WCAC's decision, and remand for further proceedings.

Decedent Randy Lesner, plaintiff's son, was killed during the course of his employment for defendant Liquid Disposal, Inc. Plaintiff, who at that time was disabled, filed a claim for worker's compensation death benefits. The evidence showed that at the time of his death decedent lived at home with his parents and his brother Rockne, and contributed money and services which were of benefit to the entire household. Plaintiff also received support in the form of money and services from his wife and Rockne, and eventually began receiving social security disability benefits. The hearing referee found that plaintiff was partially dependent on decedent, and awarded him death benefits in the amount of \$170.21 per week for 500 weeks from January 13, 1982, the date of decedent's death.

The Worker's Compensation Appeal Board (WCAB) concluded that plaintiff was twenty-five percent dependent on decedent, and calculated that decedent contributed \$5,544 to plaintiff's support. The WCAB awarded plaintiff a death benefit of \$170.23, an amount equal to fifty percent of the state average weekly wage for 1982. MCL 418.356(2); MSA 17.237(356)(2). By virtue of a settlement

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

reached with a third party, plaintiff's benefit was reduced to \$86.17. *Franges v General Motors Corp*, 404 Mich 590; 274 NW2d 392 (1979).

Subsequent appeals resulted in a remand for further proceedings. In *Lesner v Liquid Disposal, Inc*, unpublished opinion per curiam of the Court of Appeals, dated December 29, 1994 (Docket No. 136338), another panel of this Court affirmed in part and remanded for further proceedings. This Court rejected defendant's assertions that the WCAB erred by finding that plaintiff was dependent on decedent, and by awarding him a benefit equal to fifty percent of the state average weekly wage. This Court remanded the case for recalculation of benefits. In lieu of granting leave to appeal, our Supreme Court remanded for recalculation of benefits using the formula set forth in *Weems v Chrysler Corp*, 448 Mich 679; 533 NW2d 287 (1995). Under that formula, the deceased employee's annual after-tax earnings are divided by the total relevant family income. The total relevant family income is calculated by adding the deceased employee's annual after-tax earnings to the partial dependent's regular and substantial annual income. The resulting figure is multiplied by eighty percent. That resulting figure is multiplied by the deceased employee's after-tax weekly wage. *Id.*, 696, 702-703.

On remand the WCAC, successor to the WCAB, determined that plaintiff was entitled to a weekly benefit of \$61.40, reduced to \$31.08 pursuant to *Franges, supra*. To calculate the benefit, the WCAC divided \$5,544, decedent's contribution to plaintiff, by \$22,126, the total relevant family income. The WCAC added the figure of \$5,544 to the figures of \$2,082 and \$14,500, the amount of support plaintiff received from Rockne and his wife, respectively, to determine the total relevant family income. The WCAC determined that plaintiff was twenty-five percent dependent on decedent. The WCAC multiplied twenty-five percent by eighty percent to reach a figure of twenty percent. The WCAC then multiplied twenty percent by \$307, decedent's average weekly wage, to determine the benefit due plaintiff. It is this decision that we now vacate.

Findings of fact made by a magistrate are conclusive on the WCAC if they are supported by competent, material, and substantial evidence on the whole record. MCL 418.861a(3); MSA 17.237(861a)(3). If a magistrate's decision is supported by the requisite evidence, the WCAC need go no further in its review. If the WCAC finds that the magistrate did not rely on competent evidence, it must detail its findings and the reasons therefore as grounded in the record. The WCAC may then make its own findings. Those findings are conclusive if the WCAC was acting within its powers. Appellate review is limited to a determination of whether the WCAC exceeded its authority. *Goff v Bil-Mar Foods, Inc (After Remand)*, 454 Mich 507, 538; 563 NW2d 214 (1997). The WCAC exceeds its authority when it makes impermissible findings of fact in the absence of findings of fact made by the magistrate. If a necessary factual finding has not been made by the magistrate, the case must be remanded to the magistrate. *Layman v Newkirk Electric Associates, Inc.*, 458 Mich 494, 509; 581 NW2d 244 (1998).

Initially, plaintiff argues that because he had no regular and substantial income, he was totally dependent on decedent and was therefore entitled to the maximum death benefit. MCL 418.331(1)(b); MSA 17.237(331)(1)(b). We disagree. In its initial decision, the WCAB rejected plaintiff's argument that he was totally dependent on decedent. Plaintiff did not appeal that finding; therefore, it stands as

the law of the case. *Pulver v Dundee Cement Co*, 445 Mich 68, 70 n 2; 515 NW2d 728 (1994). In any event, the evidence showed that plaintiff had income in the form of contributions from his wife and Rockne. This income was as guaranteed as was his income from decedent. In addition, prior to decedent's death, plaintiff had been found to be eligible for social security disability benefits. The original finding that plaintiff was only partially dependent on decedent was correct. *Weems, supra*, 691.

Plaintiff also argues that the WCAC erred by incorrectly applying the *Weems* formula. We agree, and remand for application of the formula as written. The WCAC erroneously used \$5,544, the amount found by the WCAB to have been decedent's contribution to plaintiff's support, as both the top figure in the formula and as decedent's portion of the total relevant family income, rather than using decedent's after-tax annual earnings of \$27,831 in both those places in the formula.

Correctly applying the *Weems* formula as written, the pre-*Franges* benefit due to plaintiff is calculated as follows. Dividing \$27,831 by \$44,413 (the total relevant family income, calculated by adding decedent's contribution of \$27,831 to the contributions of \$14,500 and \$2,082 made by plaintiff's wife and Rockne, respectively) yields a rounded figure of .63. Multiplying .63 by eighty percent yields a rounded figure of .50. Multiplying .50 by \$307, decedent's average weekly wage, results in a benefit amount of \$153.50. This amount, to be reduced appropriately pursuant to *Franges, supra*, is the weekly benefit due plaintiff.

The WCAC's decision is vacated, and this case is remanded to the WCAC for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff  
/s/ William B. Murphy  
/s/ Joseph B. Sullivan